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UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

SUMMARY RECORD OF THE 2nd PLENARY MEETING

Held at the Austria Center Vienna,
on Tuesday, 2 April 1991, at 2.30 p.m.

President: Mr. ABASCAL (Mexico)

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The meeting was called to order at 2.45 p.m.

ADOPTION OF THE AGENDA (item 3 of the provisional agenda)

1. The provisional agenda (A/CONF.152/2) was adopted.

ADOPTION OF THE RULES OF PROCEDURE (agenda item 4)

2. The provisional rules of procedure (A/CONF.152/3) were adopted.

ELECTION OF VICE-PRESIDENTS OF THE CONFERENCE AND OF A CHAIRMAN OF EACH OF THE MAIN COMMITTEES (agenda item 5)

3. Mr. ROMAN (Belgium), speaking on behalf of the group of Western European and Other States, nominated the representatives of Australia, Belgium, Italy, Japan, Spain and Sweden for 6 of the 22 posts of Vice-President of the Conference.

4. Mr. LAVIÑA (Philippines), speaking on behalf of the group of Asian States, nominated the representatives of China, Indonesia, the Islamic Republic of Iran and the Philippines for four of the posts of Vice-President of the Conference.

5. The PRESIDENT said that discussion of the item would continue when the other regional groups had decided on their nominations.

CREDENTIALS OF REPRESENTATIVES TO THE CONFERENCE (agenda item 6)

(a) APPOINTMENT OF THE CREDENTIALS COMMITTEE

6. The PRESIDENT suggested that the meeting should be suspended to allow delegations to hold informal consultations on nominations for the membership of the Credentials Committee.

ORGANIZATION OF WORK (agenda item 8)

7. Mr. BERGSTEN (Executive Secretary) drew attention to an aspect of General Assembly resolution 44/33 convening the Conference which had a bearing on its rules of procedure. Under paragraph 6 (d) of the resolution, the Secretary-General had been requested to invite the specialized agencies and the International Atomic Energy Agency, as well as interested organs of the United Nations and interested international organizations, to be represented at the Conference by observers. The term "interested international organizations" had been understood by the drafters of the resolution to apply to both intergovernmental and non-governmental organizations. Subsequently, however, when the draft rules of procedure for the Conference had been submitted to the Office of the Legal Counsel, that Office had advised that, although the intention in drafting the resolution had been to include non-governmental organizations, the form of words appropriate for that purpose had not been used and accordingly paragraph 6 (d) of the resolution covered only intergovernmental bodies. The Legal Counsel had therefore suggested that the Executive Secretary should invite those non-governmental organizations which normally participated in UNCITRAL's work to attend the Conference but that no provision should be made in the rules of procedure for their participation. Invitations had been issued to that end and representatives of some of the bodies invited were present. It could be expected that they might wish to make general statements on the subject-matter of the draft Convention and in some cases to comment on specific points. To allow them to do so the Conference would have to suspend its rules of procedure whenever the

(Mr. Bergsten, Executive Secretary)

representative of a non-governmental organization wished to take the floor. That could be done, on each such occasion, by the President, or the Chairman of the Committee concerned, indicating that such a representative wished to speak, whereupon the representative would be able to do so unless any representative entitled by the rules of procedure to participate in the Conference objected.

The meeting was suspended at 3.20 p.m. and resumed at 4.10 p.m.

CONSIDERATION OF THE QUESTION OF THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 44/33 OF 4 DECEMBER 1989 (agenda item 9) (A/CONF.152/5, 6, 7 and Add.1 and Add.1/Corr.1 and Add.2)

8. Mr. RAMBERG (Observer, International Maritime Committee) expressed the satisfaction of the International Maritime Committee that the draft Convention had been prepared and a conference convened to discuss it. The Committee hoped that, in agreeing on a final text, the Conference would pay due attention to the very difficult question of the scope of application of the Convention. It was extremely important that the scope of any mandatory convention should be clearly defined. The problem of goods involved in international transport had been discussed at length in the International Institute for the Unification of Private Law (UNIDROIT), where the difficulty of determining the scope of application had led UNIDROIT to prefer model rules on the subject to an international convention. The Committee hoped that the Conference would address the subject in detail and formulate the Convention in the most precise possible language.

9. The Conference should also seek to ensure that the Convention was as compatible as possible with the United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules), particularly in view of the significant difference between the latter, the draft Convention and the United Nations Convention on International Multimodal Transport of Goods with regard to loss of the right to limit liability. It was gratifying that many States seemed in favour of full compatibility between the Hamburg Rules and the new Convention in that respect.

10. Mr. ZHAO (China) said that his Government fully appreciated the contribution which the United Nations Commission on International Trade Law (UNCITRAL) and its Working Group on International Contract Practices had made to the draft Convention. The text now before the Conference was basically acceptable, although some parts required further discussion. The Convention would fill gaps in world transport rules and contribute to the management and operation of terminals and the development of international trade.

11. Mr. LARSEN (United States of America) said that his delegation's approach to the Conference was a positive one, given the wide and active support for a convention on the subject among United States stevedoring companies, ports and container owners. The text as it stood required some improvement, however, in order to ensure that the gap between existing transport conventions was adequately filled; that something was done to facilitate the movement of containers; that documentation, notably in the form of electronic data interchange and electronic contracting, was properly catered for; and that more satisfactory provision was made in regard to liability and liability limits. His country had been considerably frustrated by the lack of entry into force of important transport conventions such as the Convention on International Multimodal Transport and therefore believed that there should be a low number of ratifications for the entry into force of the Convention about to be discussed.

12. Mr. WALL (United Kingdom) said that his Government was still concerned about the justification for proceeding to an international convention on the liability of operators of transport terminals, since it was not a matter amenable to international uniformity. If nevertheless it was shown that international uniformity was required, significant improvements would be needed to the text before the Conference in order to ensure that there was no confusion over precisely whom the Convention would cover and what the liability of operators might be. Although his delegation approached the work with some scepticism, it would participate actively in the debates, make appropriate proposals to improve the drafting of the Convention and, if the Convention merited support, consider its position on the matter when the time came. From the outset, however, it urged delegations to consider seriously whether the Conference could produce an international convention capable of easy understanding and wide and international applicability. Mention had been made of filling the gaps between international transport conventions, yet many of those gaps had arisen because the conventions had not secured support, particularly from major trading nations. His delegation also urged that the cost of insurance implied by the proposed Convention should be carefully considered, particularly with a view to limiting the number of persons upon whom it would impose a significant insurance burden.

13. Mr. LEBEDEV (Union of Soviet Socialist Republics) said that his delegation saw the draft Convention as a useful means of arriving at an internationally acceptable system of regulating transport as a whole. It should not be forgotten that the development of the draft had been considered necessary because it had been found that goods were extensively damaged in transport terminals before loading, during transfer operations or after offloading, and consequently were not covered by any existing international transport convention. A number of problems had arisen with regard to the terminology involved. The draft might need to be worded more precisely on issues such as the scope of the Convention, the definition of the operations it covered and the individuals to whom it would apply.

The meeting rose at 4.50 p.m.